
(1980) 11 AHC CK 0035
In the Allahabad High Court
Case No : Second Appeal No.1614 of 1970

Ram Priya Saran

APPELLANT

Vs

Ghan Sham Das and another

RESPONDENT

Date of Decision : 14-11-1980

Acts Referred:

Contract Act, 1872 — Section 10, 31
Partnership Act, 1932 — Section 4

Citation : (1980) 11 AHC CK 0035

Hon'ble Judges : DEOKI NANDAN, J

Final Decision : Dismissed

Judgement

1. This is a defendants second appeal in a suit for recovery of Rs. 2,700/. Of the two defendants only the second defendant who is the appellant in this Court contested the suit. The suit was decreed for recovery of Rs. 2,300/ by trial court with proportionate costs and that decree has been confirmed by the lower appellate Court.

2. In this case the fact that the amount decreed was paid by the plaintiff to the defendant was not disputed. The dispute related to the terms and the purpose for which the money was advanced. The jurisdiction of the court was also disputed on the ground that the agreement between the parties was completed outside the limits of the territorial jurisdiction of the court.

3. The two questions raised before the lower appellate Court were; firstly; whether the agreement between the parties took place at Shankargarh or it took place at Devendra Nagar and whether the amounts were advanced at Shankargarh or at Naugaon and Devendra Nagar, and secondly whether the agreement between the parties amounted to an agreement of partnership and it actually resulted in partnership and the frame of the suit is bad and it is barred by the provisions of the

Partnership Act. On an appraisal of the evidence on the record, the lower appellate court held that the agreement between the parties was arrived at, and

the amounts were also advanced at Shankargarh within the District of Allahabad and consequently the court at Allahabad had the jurisdiction to entertain the suit. So far as this finding is concerned, it is concluded by facts found concurrently by the two courts below on an appraisal of the evidence on the record, and is not open to challenge on second appeal.

4. On the second point, the lower appellate court found that the agreement between the parties was a contingent agreement and that it was to carry on Theka business after the tender was accepted, and that "it did not result in partnership because of the rejection of the tender, and so the plaintiff being entitled to recover the amount of the advance made by the plaintiff under Section 65 of the Contract Act, was entitled to bring the suit in the manner as he did."

5. Mr. Sankatha Rai, learned counsel for the appellant urged before me that the plaintiffs case was not that the terms of the agreement on which the amount was advanced by the plaintiff to the contesting defendant did not amount to a completed partnership but that the partnership was in respect of the work of Devendra Nagar Bandh only and that being so the lower appellate Court has carved out a new case for the plaintiff by holding that the contract on which the amount was advanced was a mere contingent contract. Mr. Sankatha Rai reinforced his submission by Placing before me the statement of the plaintiff under O.10, Rule 2 of the Code of Civil Procedure which reads as under:

"He has advanced only Rs. 2,410/ to the defendant in the partnership business only for Devendra Nagar Dam. He did not advance any other sum for any other partnership business. In fact there was no partnership for any other business at all. The defendants have taken loan of Rs. 1782 for different purpose in their own accounts."

Learned counsel stated that the above statement of the plaintiff clearly showed that according to the plaintiffs own case there was a partnership between him and the contesting defendant for the work of Devendra Nagar Dam and the amount in question was advanced in pursuance of that partnership. According to the learned counsel, that being so, the suit must fail, for the partnership was unregistered and such a suit as the present one would be barred by Section 69 of the Indian Partnership Act, 1932.

6. Mr. Sankatha Rai, learned counsel for the appellant, also invited my attention to the finding of the trial court on this point, which was covered by issues Nos. 3 and 4. The finding of the trial court on issue No. 3 was that the agreement between the parties regarding partnership had been concluded only in respect of Devendra Nagar Dam and not in respect of any other Theka, and on issue No. 4, the finding of the trial court was that the plaintiff advanced a sum of Rs. 2300/ only for Devendra Nagar Dam and not for any other Theka. The question about the bar of Section 69 of the Partnership Act does not appear to have been raised in that form but seems to have been taken by the trial court to be covered by

issue No. 2, which was to the effect, "Whether this suit is premature?" The finding of the trial court on this point was that the suit is not barred and is maintainable and is also not premature.

7. Having heard the defendant-appellant I find that on a true interpretation of the terms of the contract between the parties it could not be said that a partnership, that is, to say the relationship of partners, as defined by Section 4 of the Partnership Act came into existence between them. The contract between the parties was complete when the amount of Rs. 2,000/- was advanced by the plaintiff to the defendant on the following terms incorporated in the receipt, Ext. 4 for money dated 29th December, 1964 which was passed on by the defendant to the plaintiff. The terms of the receipt are as under:

(This matter being in Hindi we regret that we have to omit it here as we have no facilities for printing Hindi.)

It is not right to say that it was contingent contract. It is also a contract of partnership, but its terms show that the partnership would commence when the tender was accepted and the work was carried on pursuant thereto. Section 4 of the Indian Partnership Act, 1932 defines partnership as

"the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all."

The first thing to be noticed in this definition is that the partnership is a relation between persons. That relation arises from prior agreement between those persons. The agreement had to be for sharing the profits of a business and the business has to be carried on by all or any of them acting for all. In the present case the agreement between the parties was complete when the amount was advanced as evidenced by the receipt dated 29th December, 1964, Ext. 4. The parties could, therefore, be said to have agreed to share the profits of the business which was to be carried on by them after the acceptance of the tender which was to be submitted and for which purpose the plaintiff had paid the sum of Rs. 2,000/- to the defendant, but the terms of the receipt contemplated that in case the tender was not accepted, no business was to be carried on by them and there could have been in that case no question of sharing of the profits of any business. Partnership could not come into existence unless the business was carried on by the parties. Since the contract between the parties did not contemplate the carrying on of any other business by them, the contract stood frustrated when the tender for the work of Devendra Nagar Dam was rejected. I am therefore, of the opinion that the partnership between the parties which was contemplated by the agreement witnessed by the receipt dated 29th December, 1964, Ext. 4, did not come into being.

8. As to the point raised by the learned counsel that the case of the plaintiff himself was that there was a partnership between the parties but the partnership was for the business of only Devendra Nagar Dam and that, therefore, it is not open to the court to come to the finding that the partnership for carrying on the

work of Devendra Nagar Dam did not come into being. I must say that the parties cannot be blamed for taking up that case. The distinction between the contract of partnership which had come into existence in the present case, and the relationship which in law amounted to partnership is rather subtle and very much like the difference between a contract of sale and a completed sale. The point raised by the defendantappellant was highly technical and was intended to somehow defeat the plaintiffs suit, although it has been found proved that the defendant did take the amount of Rupees 2300/ from the plaintiff, and on obtaining refund of the earnest money which had been deposited for the Devendra Nagar Dam he utilised that money in other works, and in order to defeat the plaintiffs claim even took up the plea that there was a partnership between him and the plaintiff. In all these circumstances I am of the view that the decree under appeal is unassailable and must be confirmed. In the result the appeal must fail and is dismissed with costs.

Appeal dismissed.